IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11621 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

G S R T CORPN

Versus

NANJIBHAI MOHANBHAI VACHHANI

Appearance:

MR ASHISH M DAGLI for Petitioner

MR JS BRAHMBHATT for Respondent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/09/2001

ORAL JUDGEMENT

#. Rule. Mr.Brahmbhatt waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The respondent, at the relevant time, was serving as

Conductor in the S.T.Corporation. He was subjected to the departmental proceedings on the ground that he has not issued the tickets to four passengers even though he has collected the fare. Ultimately, he was dismissed from service after conclusion of the said inquiry.

#. The concerned workman raised industrial dispute which was numbered as Reference (LCJ) No.9 of 1997. The Labour Court came to the conclusion that it is not proved that the concerned conductor has either accepted the fare or even given the tickets to any of the passengers and thereafter kept money with him. The Labour Court came to the conclusion that, therefore, misconduct against the said workman cannot be said to have been proved. The Labour Court also found that, in any case, the punishment of removal was on higher side. Under these circumstances the order of reinstatement without back-wages was passed. The S.T. Corporation has challenged the said award by filing the present petition.

#. It was argued by Mr.Dagli that, even if it is presumed that the concerned conductor has not issued the tickets to the four passengers, the said action itself amounts to misconduct as the conductor supposed to issue the tickets to all the passengers. It is submitted that, therefore, even if the concerned conductor has not misappropriated any amount by collecting the fare, he was negligent in not issuing the tickets to the passengers, which is also a serious misconduct. In his submission, therefore, at least some punishment was required to be inflicted on the concerned workman by the Labour Court while exercising the powers under section 11-A of the Industrial Disputes Act.

#. On the other-hand, Mr.Brahmbhatt states that, he has no objection if the award of the Labour Court is suitably modified and that the respondent is subjected to some punishment for the aforesaid so called misconduct.

#. In the facts and circumstances of the case, I am of the opinion that, it is not the case wherein the respondent should be allowed to go scot-free while exercising the powers under section 11-A of the I.D.Act. In the facts and circumstances of the case and since the learned advocates of both the sides have left the issue of punishment to this Court, I am of the opinion that the concerned workman should be subjected to the punishment of withholding of two increments with future effect. This order is required to be passed in order to see that, there may be some deterrent effect on the concerned workman, as, in the past, he was found to have been

indulged in similar type of misconduct of non-issuing the tickets.

#. In view of what is stated above, the award of the Labour Court is modified to the extent that the order of reinstatement is confirmed and the concerned workman shall be subjected to the punishment of withholding of two increments with future effect. The S.T.Corporation is directed to implement the award of the Labour Court which is modified by this court as above within one month from today and the concerned workman will be reinstated by the aforesaid time. Whatever the amount which is required to be paid to the concerned workman on the basis of this order, shall be paid within a period of one month from today. It is clarified that the order of punishment will come into effect from the date of the punishment order which was imposed by the Corporation on the concerned workman. It is also clarified that the Corporation is required to reinstate the concerned workman from the date of the award of the Labour Court or in any case from the date of the publication of the said award and that the respondent will be entitled to his regular salary from the said date. The petition is accordingly partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)